

### REMARKS

This communication is in response to the office action mailed on May 7, 2009. In that office action, claims 1-7 and 11-8 were rejected. Claims 8-10 were deemed to recite allowable subject matter if features of the base claims were to be incorporated into the objected claims, which is noted with appreciation.

With this response, claims 8 and 14-17 have been cancelled, and claims 1, 7, and 11 have been amended. Claims 1-7, 9-13, and 18 remain pending in the application are presented for consideration and allowance.

#### **Rejections under 35 U.S.C. § 102**

Claims 1-7 and 11-18 were rejected under 35 U.S.C. § 102 as anticipated by Anderson, US patent number 7,261,706 ("Anderson").

With reference to Anderson at column 4, lines 44-64 and Figure 1, Anderson discloses a package for an ostomy appliance that includes a first compartment 6 located between the walls 5. As described by Anderson at column 4, lines 44-64 a fresh ostomy appliance is stored in compartment 6. The closed end 2 of bag 1 may be peeled away from first wall 4 to provide a cavity (the second compartment) that is accessed through opening 3.

With this response, independent claim 1 has been amended to require that when a first lateral edge of the bag extending between the open and closed ends is folded toward the longitudinal axis and a second opposing lateral edge of the bag extending between the open and closed ends is folded toward the longitudinal axis, the first lateral edge and the second lateral edge folded one adjacent to another so as to define the first compartment and wherein the ostomy receiving appliance is accommodated a first compartment. Support from the language of amended independent claim 1 is located in the application as filed (as evidenced by the published application US publication number 2007/0045300), for example at paragraph 0034, paragraph 007, and Figures 2, 3, and 4 of the published application. Applicant further relies on established case law that has held that the drawings may provide the basis for subsequent amendments to the Specification without producing prohibitory new matter. *In re Wolfensperger*, 302 F.2d 950, 133 USPQ 537 (C.C.P.A. 1962); M.P.E.P. §2163.02. Under *Wolfensperger*: "The practical,

legitimate inquiry in each case of this kind is what the drawing in fact discloses to one of skill in the art. Whatever it does disclose may be added to the Specification in words without violation of the statute and rule which prohibit 'new matter,' 35 U.S.C. §132, rule 118, for the simple reason that what is originally disclosed cannot be 'new matter' within the meaning of this law." (emphasis added) 133 USPQ at 542.

Figures 2-4 of the pending application illustrate the patently distinct differences over Anderson. For example, Figure 2 illustrates an ostomy appliance 8 placed on a surface of a first wall 4 of bag 1; Figure 3 illustrates that the lateral edges of bag 1 are folded toward a longitudinal axis of the bag 1; and Figure 4 illustrates the closed end 2 of the bag folded parallel to the open end 3 to form a compartment that retains the ostomy appliance 8.

Anderson does not teach or suggest limitations of amended independent claim 1. Claims 2-6 and 11-13 further define amended independent claim 1.

With this response, independent claim 7 has been amended to recite a portion of the allowable subject matter of claim 8. Claims 9-10 and 18 further define amended independent claim 7 and are believed to be allowable.

Thus, it is respectfully requested that the rejections to claims 1-7 and 11-18 under 35 U.S.C. section 102 is anticipated by Anderson be withdrawn.

### **CONCLUSION**

Applicant asserts that pending claims 1-7, 9-13, and 18 are in condition for allowance and notice of the same is respectfully requested. Should issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned. No additional fees are believed due at this time; however, the office is authorized to charge any fees actually due and credit any overpayment to deposit account 50-4439.

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